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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2114 of 2004

with

SPECIAL CIVIL APPLICATION No 2126 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LADUBEN, WIDOW OF NARSINHBHAI KANABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2114 of 2004
   MR BS PATEL for Petitioner No. 1-2
   MRS RANJAN B PATEL for Petitioner No. 1-2
   MR NAGESH SOOD, AGP for Respondent No. 1-2
2. Special Civil Application No. 2126 of 2004
   MR BS PATEL for Petitioner No. 1
   MR NAGESH SOOD, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/07/2004

COMMON ORAL JUDGMENT

Rule. Shri Nagesh Sood, Ld. AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing.

2. The petitioners are the owners of agricultural lands in the sim of Village Vinchiya, Taluka Sanand, District Ahmedabad. They had submitted an application to the Collector for conversion of use from agricultural to nonagricultural under Section 48 of the Bombay Land Revenue Code in the year 2001. It is the case of the petitioners that the said application was decided by the Collector fixing the price of the land in question at Rs.50/- per sq.mtr. As the price fixed by the Collector was excessive, the petitioners approached the Collector and submitted that as per the Jantri price approved by the Government, the price is required to be fixed while deciding the question of premium. He has also produced the sale instances. Not only that, but he has also produced the order passed by the very Collector fixing the premium of land situated in the same village at Rs.16/- per sq.mtr. and the said order was passed on 25.3.1998. It was also the case of the petitioner that even considering 10% rise per year, the price of the land would be considered to be Rs.21/- per sq.mtr. Inspite of the aforesaid facts, the Collector passed an order dated 24.6.2003.

Being aggrieved and dissatisfied with the order passed by the Collector dated 24.6.2003 in fixing the premium considering the market price of the land in question at Rs.50/- per sq.mtr., the petitioners preferred Revision Application before the State Government. That the Revisional Authority by its judgment and order dated 5/31.12.2003 dismissed both the revision applications and confirmed the order passed by the Collector dated 24.6.2003 fixing the premium considering the market at the price of Rs.50/- per sq.mtr. The said orders are subject matter of the present Special Civil Applications under Articles 226 and 227 of the Constitution of India.

3. Shri B.S.Patel, Learned Advocate appearing on behalf of the petitioners had submitted that the impugned order dated 24.6.2003 passed by the District Collector, Ahmedabad is an exparte order and the price has been fixed by the Collector without giving any opportunity of

hearing to the petitioners. He has submitted that if the opportunity would have been given to the petitioners then the petitioners would have pointed out the correct market price of the land in question. However, as no opportunity is given, the petitioner could not point out the correct market price. He has further submitted that even otherwise, the order passed by the very Collector fixing the market price of Village Vinchiya at the rate of Rs.16/- per sq.mtr. was produced before him but considering the fact that the land in question is in a different location, the same is not considered and therefore, requested to remand the matter by directing the Collector to redetermine the premium in light of the order passed by the Collector which was passed in 1998.

4. In response to the notice issued by this Court, Shri Sood, Ld. AGP appears on behalf of the respondent but no counter is filed to the present Special Civil Application. However, he submits that the order passed by the Collector dated 2.6.2003 is passed on the basis of the price fixed by the Land Price Committee and therefore, the District Collector was justified in directing the petitioners to pay the premium considering the market price at the rate of Rs.50/- per sq.mtr., which was the market price determined by the Land price Committee as on 6.6.2003. Therefore, he requested to dismiss the present Special Civil Applications.

5. Heard the Learned Advocates by the parties.

6. The applications were submitted by the respective petitioners in the year 2001. The decision came to be taken by the District Collector in the year 2003 and the premium is fixed considering the market price of the land in question as on 6.6.2003 on the basis of the market price fixed by the Land Prince Committee. As held by this Court in the case of Asutosh Co.op. Housing Society Ltd. Vs. State of Gujarat reported in 1995 (2) GLR Page 1419, the price while fixing the premium is required to be considered the day on which the application is submitted as there was no fault on the part of the petitioners in not taking the decision earlier. From the order dated 24.6.2003, it seems that the Collector has fixed the price considering the market price as on 6.6.2003 though the application was filed in the year 2001. Therefore, in view of the judgement of this Court in Asutosh Co.op. Housing Society Ltd. (supra), the order passed by the District Collector fixing the market price at Rs.50/- per sq.mtr. considering the market price as on 4.6.2003 is absolutely illegal which requires to be quashed and set aside. Even otherwise, the order

passed by the District Collector, Ahmedabad fixing the market price of the land in question at Rs.50 per sq.mtr. is against the principles of natural justice. While fixing the market price at Rs.50/- per sq.mtr., no opportunity of hearing has been given to the petitioners. There is another aspect of the matter also. The very Collector, Ahmedabad has fixed the premium in the year 1998 considering the market price at the rate of Rs.16/per sq.mtr. with regard to the land situated in the very village. Even considering 10% rise (even as per the provisions of the Land Acquisition Act), the market price might be higher but it cannot be Rs.50/- per sq.mtr. The location of the land in a small village cannot have such a variation. Considering all the aforesaid facts and circumstances of the case, the impugned order dated 24.6.2003 passed by the District Collector, Ahmedabad in fixing the premium with regard to the land in question at the rate of Rs.50/- per sq.mtr. requires to be quashed and set aside. Consequently, the orders passed by the Revisional Authority confirming the said orders also requires to be quashed and set aside. The matter is remanded to the Collector, Ahmedabad for determining the premium/market price of the land in question considering the observations made by this Court hereinabove, considering the judgment of this Court and also considering the order passed by the Collector, Ahmedabad dated 25.3.1998. Accordingly, both these petitions are allowed. The order passed by the Collector, Ahmedabad dated 24.6.2003 confirmed by the Revisional Authorities are quashed and set aside. The matter is now remanded to the District Collector, Ahmedabad for redetermining the amount of premium in light of the observations made hereinabove. Such an exercise is required to be made within 3 months from the date of the receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(M.R.Shah, J)

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